

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

In the Matter of:	)	
	)	Docket No. EPCRA-05-2006-0021
TCM Progressive, Inc.	)	
	)	
	)	
	)	
Respondent.	)	
_____	)	

**ORDER TO FILE AMENDED COMPLAINT OR, ALTERNATIVELY,  
TO SHOW CAUSE**

Complainant, the Chief of the Emergency Response Branch, Superfund Division, U.S. Environmental Protection Agency (U.S. EPA) Region 5, filed a Complaint in this administrative action on April 4, 2006, alleging that Respondent TCM Progressive, Inc. violated the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11001 *et seq.* Respondent was served with a copy of the Complaint on June 6, 2006. Respondent has failed to file an Answer as required by 40 C.F.R. § 22.15. *See* Attachment N to Complainant's Memorandum in Support of Complainant's Motion for Default Order. On February 6, 2007, Complainant moved for the entry of a Default Order against TCM Progressive, Inc., and the assessment of a penalty of \$99,675.

On April 20, 2007, the undersigned issued an Order to Show Cause and Order to Supplement the Record. In that Order, I directed the Complainant to supplement the record with respect to its penalty calculation and Respondent to show cause why it should not be held in default and to answer the Complaint. On May 17, 2007, Complainant filed the Declaration of Ginger Jager, the environmental scientist at U.S. EPA who calculated the penalty in this matter. Respondent did not respond to the April 20, 2007, Order.

Upon closer scrutiny of the Complaint, I conclude that I am unable to issue a default order because the Complaint fails to properly state a cause of action. Paragraphs 18, 19 and 20 of the Complaint state that Respondent was required to submit to various emergency response agencies "an MSDS for propane or a list including propane" for the calendar years 2002, 2003 and 2004, respectively. Paragraphs 25, 28 and 31, however, allege that Respondent failed to submit a completed Emergency Chemical Inventory Form[s] for those years. Paragraphs 26, 29 and 32 then allege that such failures constitute violations of Sections 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Section 311 of EPCRA<sup>1</sup> requires certain facility owner/operators to submit a material

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<sup>1</sup> 42 U.S.C. § 11021.

safety data sheet (MSDS) or a list of each hazardous chemical present at the facility in a quantity over a specific threshold. Section 312,<sup>2</sup> on the other hand, requires certain owner/operators to submit “emergency and hazardous chemical inventory forms” to emergency response agencies containing specific information as set forth in that section. The Complaint includes allegations regarding two provisions of EPCRA with separate and distinct reporting requirements, but fails to state a cause of action for either. Accordingly, I am unable to make the findings of fact and conclusions of law required by 40 C.F.R. § 22.27(a) for an initial decision on liability.

The undersigned is of the view that an Amended Complaint is in order here. Accordingly, Complainant is ORDERED on or before July 3, 2007, to file an Amended Complaint in this matter or, alternatively, to show cause why its motion for default should not be denied.

SO ORDERED.

Dated: June 12, 2007

Marcy A. Toney  
Regional Judicial Officer

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<sup>2</sup> 42 U.S.C. § 11022.

In the Matter of TCM Progressive, Inc., Respondent.  
Docket No. EPCRA-05-2006-0021

CERTIFICATE OF SERVICE

I certify that the foregoing Order to Show Cause, dated June 12, 2007, was sent this day in the following manner:

Original hand delivered to:

Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Copy hand delivered to  
Attorney for Complainant:

Maria Gonzalez  
U. S. Environmental Protection  
Agency, Region 5  
Office of Regional Counsel  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Copy by U.S. Certified Mail  
Return Receipt Requested to:

Mr. David Rice  
1441 Horseshoe Circle  
Milford, MI 48381-3178

Mr. David Rice  
33900 West Nine Mile Road  
Farmington, MI 48335

Stuart Brickner  
28411 Northwestern Highway  
Suite 200  
Southfield, MI 48034

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Darlene Weatherspoon  
Administrative Assistant